

ROBERT J. ABBOTT  
414 JACKSON AVENUE  
CAPE CANAVERAL, FL.  
32920

15 June, 1995

OFFICE OF THE SECRETARY  
William F. Canton, Acting Secretary  
FEDERAL COMMUNICATIONS COMMISSION  
1919 M Street, N.W.  
Washington, D.C. 20554

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Re: COMMENT TO NOTICE OF PROPOSED RULEMAKING, 27 April,  
1995, FCC 95-180, IB Docket 95-59, DA 91-577, 45-DSS-MISC- 93.  
Preemption of Local Zoning or Other Regulation of Receive Only Satellite  
Earth Stations.

The Undersigned respectfully submits the following comments in support  
of the above Notice.

1. The modifications to 25.104 in paragraphs (a) through (f) present a  
great improvement over the 1986 Order. However, a weakness still exists, as this  
revision does not dissuade litigation. The Commission should consider an  
enforcement mechanism of monetary fines to dissuade local governments from  
ignoring the 1995 Order as has occurred with the 1986 order. No penalty is  
specified in the proposed 1995 Order.

2. I was a City Councilman-elect for the City of Cape Canaveral in  
1992 and 1993 and I can speak from a perspective of sitting beside my "city  
officials" as a Council member, and standing before them as a private citizen;  
because they are insured, they demonstrate no fear in ignoring this Order.

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3. As in my case, and others before me, when fines and penalties are assessed against citizens for violations of local Satellite Antenna Ordinances, the accused citizen (herein referred to as "the victims") of my City must spend \$1000 for legal representation before a City Board and an additional \$3000 to \$5000 to file a Petition for Writ of Certiorari in the Circuit Court. If one does not know enough "information" to record in the Code Enforcement or Land Use Board minutes, the official record will be weak and the case will be lost. I am an electrical engineer with NASA, I do understand the technology requirements, many victims do not and the courts are unwilling to appreciate the requirements.

4. In the Circuit Courts of this County (Brevard) it is *presumed* that local governments are representatives of their people and therefore, even when the law appears favorable to the victim, the Courts will rule in favor of the City. The burden of proof and attorney fees and costs still rest upon the shoulders of the victim. In the rare event the victim does prevail, there is no entitlement to recover their legal fees. **The City depends upon these financial burdens as their enforcement tool.** When I presented the 1986 Preemption Order and case law to my Board, they advised me "If you disagree with our decision, go into the federal court." So I did. Their insurance company advised them to settle, (see exhibit) they ignored the advise, hid behind the city's \$100,000 insurance policy (Florida League of Cities) and the insurer paid all the legal fees to defend them in federal court.

5. With the City of Cape Canaveral facing a Civil Rights lawsuit under

42 U.S.C. 1983 and 1988, with no usable rear yard on my lot and with the physical impossibility of placing the 12 foot antenna in an 18 foot wide yard with a 15 foot side setback prohibition, the City's Building Official, James E. Morgan testified, at trial, that the "side" yard, as depicted on the city's official survey (1981) with the words "15 foot side setback" scribed within the side yard area was now declared by Morgan (1993), to be a *rear* yard. Not coincidentally, the city antenna ordinance **does not require rear yard setback compliance**.

6. U.S. District Court Judge, G. Kendall Sharp asked one question during the trial; ("What's a Ku Band?"), accepted Morgan's statements, and based his decision on the opinions of the City's "expert", who testified that the antenna **could** "operate while obstructed up to 50%", and testified as to the vast range of reception while located in the setback area of the side yard, which was all hypothetical nonsense because it is unlawful to install it in that location. Additionally, the satellites from 122W through 137W degrees are obstructed from line of sight because of an 11 foot duplex to the west of this location and a maximum antenna height restriction of 7 feet (see photos), and all the INTEL SAT satellites are blocked to the east. These are the absurd realities of what "litigation" against a local government means to those who have lost in the court system. Generally, the courts do not appear to be interested in clarifying the technical rationale on this satellite technology or a vague objective in an Order.

7. To this day, I am at a total loss to understand how a sitting federal judge can accept this characterization between a "rear" and a "side" yard.

8. When I challenged the absence of the health safety and aesthetic

objectives in the Cape Canaveral ordinance, the City found an earlier version that did have the verbiage but without defining intent or motive, and the District Court still accepted it. The City has no historical districts or planned communities regarding "aesthetics". The City used "hurricanes" for their "health & safety" motive and retained Dr. Ron Cook, a structural engineer commissioned by the State of Florida to assess the damage from Hurricane Andrew and recommend improvements to building codes to minimize damage. However, the City did not use his testimony because he opined (see exhibit p 49-50):

**"from a structural perspective I could design you an adequate support system for a satellite dish on top of your building, on the side of your building. But in fact, from a structural perspective, it can be done, there is no reason to preclude that from a structural perspective."**

9. The Commission should consider that local government may be more interested in protecting their cable franchise commissions over a citizens "right to receive". (Cape Canaveral receives \$120,000/yr in franchise fees.)

10. Additionally, apartment owners, as a large class of citizens who are unable to afford a single family home, (or an attorney) may desire to utilize this technology. There is a purpose of watching television but also the capability to interface the satellite dish to the computer, such as the **Direct PC** application.

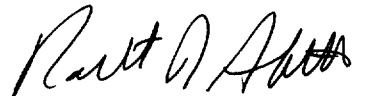
11. The Commission should consider a **complaint form** specifying WHO, WHAT, HOW, WHEN, WHY etc. in that the general public need not be attorneys, zoning, land use or communication experts to assert their rights and once again, it should consider a penalty structure as an enforcement tool and to defer the cost of enforcement.

12. Finally, The Commission should consider some type of consideration for those of us who sought the Commissions intervention (1600B3) but were advised by the Commission, to "exhaust" our local remedies, and according to the courts, are now forever "estopped" from our right to use this technology. I spent twice what my house was worth on legal fees and still lost.

13. In an imperfect world, the citizens under these local governments are defending their right to use this technology against the resources of the municipalities and their insurance company. This is the reality of the situation.

Enclosed are my exhibits. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Abbott", followed by a period.

Robert J. Abbott

Exhibits:

- 1) Photo's, 1984 and 1993 Satellite Antenna installations
- 2) Florida League of Cities Settlement Opinion
- 3) Testimony of James E. Morgan, (p267-281)
- 4) City Survey: 414 Jackson : Exhibit #33
- 5) Deposition of Dr. Ron Clark (p49-50)
- 6) 11th Circuit Court of Appeals: # 94-2135/D.C.#92-1113
- 7) Affidavit of attorney fees.



PHOTO #1

414 Jackson Ave. Cape Canaveral, FL  
Satellite antenna pointed toward  
the southwest; Galaxy 1 133'W  
Height is 22 feet to center of dish



PHOTO #2

414 Jackson Ave. Cape Canaveral, FL  
Satellite antenna pointed toward  
the southwest; Galaxy 1 133'W  
Height is 7 ft. to the center of dish.



PHOTO #3

414 Jackson Ave. Cape Canaveral, FL  
Satellite antenna pointed toward  
the southwest; Galaxy 1 133'W  
Height is 7 ft. to center of dish.  
dwelling blocking antenna is 11 ft high

FLORIDA LEAGUE OF CITIES  
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**FAX MESSAGE COVER SHEET****FAX NUMBER (407) 425-9378**

Please deliver the following pages(s) to:

Name: JOHN KANCILIA, ATTORNEYCompany/City: REINMAN, HARRELL, GRAHAM, MITCHELL & WATTWOOD, P.A.RAPA FAX No.: 407-676-0729From: GARY BRADEN *GB*Re: LEGAL OPINION - PLAINTIFF ATTORNEY FEESCLAIM NUMBER: G920181 DGBNUMBER: CITY OF CAPE CANAVERALOCCURRENCE DATE: 07 01 92CLAIMANT: ROBERT ABBOTT

We enclose a copy of the legal opinion rendered by Lamar Oxford, Attorney, stating that the plaintiff would be entitled to attorney fees under 42 USC 1983 and USC 1988 should he prevail on his claim. The Federal Communications Commission ruling obviously holds that the ordinance of the City of Cape Canaveral pertaining to receive only satellite dishes is not legal.

We also enclose a copy of the Declaration Pages of the Coverage Agreement which shows no specific excess insurance above the \$100,000/200,000 basic coverage is applicable.

The Florida Municipal Insurance Trust will provide coverage for plaintiff attorney fees arising out of the above claim.

Total Number of Pages 7 Including Cover Sheet.

Please call 407-425-9142 if you do not receive all pages.

Date Sent: 11 30 92

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AND THE DISTRICT OF COLUMBIA BAR

November 30, 1992

Via Facsimile

Mr. Gary Braden  
Litigation Specialist  
Florida League of Cities  
Post Office Box 530063  
Orlando, Florida 32853-0063

Re: Your Claim No.: G920181 DGB  
Member: City of Cape Canaveral  
D/Occurrence: 7/1/92  
Claimant: Robert Abbott

Dear Mr. Braden:

Thank you very much for referring this interesting matter to us. You have requested our opinion on the sole issue of the claimant's entitlement to attorney's fees.

As you know, claimant Abbott through his attorney Kim Lee of the Lowndes, Dreedick firm has alleged that the member City's ordinance prohibiting certain installations of earth station antennas is unconstitutional. He previously provided the City attorneys with a copy of his proposed federal court Complaint for Declaratory Relief. It alleges that the City violated the claimant's constitutional rights to free speech, due process and equal protection of the laws. It therefore brings a claim for violation of civil rights under 42 USC 1983, and a claim for attorney's fees under 42 USC 1988.

In our opinion, such claim for attorney's fees would be viable if claimant prevailed on his cause of action. Should the City capitulate and agree to allow the claimant to reinstall his satellite dish and withdraw its own ordinance, it is clear that the claimant has prevailed.



Mr. Gary Braden  
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If a civil rights cause of action is viable under circumstances, attorney's fee entitlement under 42 USC 1988 is invoked. We are very familiar with the claimant's attorney, Kim Lee, who is former federal Judge John Reed's protégé at Lowndes, Drosdick and has proven to be an excellent litigator in previous cases we have encountered him. He and Reed are not only known for being able to substantiate their claims under the law, but also receiving favorable treatment from the local federal judges, who revere former Judge Reed.

Thus, we believe you should concentrate on negotiating the amount of the fee, since entitlement would likely be a futile fight. In Morgan v. City of Coral Gables, Case No. 84-07793, the Dade County Circuit Court found that a similar City ordinance prohibiting satellite dishes was unconstitutional. That finding alone invokes the type violations under which 42 USC 1983 claims may be brought, and a plaintiff prevailing on same is entitled to attorney's fees within the federal judge's discretion under 42 USC 1988.

The four Court Orders from New York and Michigan also relied upon the Plaintiff here are verifiably good law, in addition to the Florida case of Morgan v. City of Coral Gables. Each find that governmental prohibitions on the installation of satellite dishes are unconstitutional, invoking Section 1983 actions and Section 1988 entitlement to attorney's fees.

Please also note that a 42 USC 1983 action need not be grounded solely on a violation of the U. S. Constitution. Instead, it may be grounded upon a violation of any federal law or regulation, such as the FCC regulation preempting local ordinances on installation of satellite dishes, at issue here.

In the Michigan case of Loschiavo v. City of Dearborn, the Federal Court found that the local ordinance was pre-empted by the FCC regulation, and enjoined the City from enforcing it against its residents. In the New York federal court case of Ermler v. Town of Brookhaven, 780 F. Supp. 120 (ed. NY 1992), that court found such federal regulations issued under the mandate of Congress constitute "laws" within the meaning of 42 USC 1983. Thus, the Court concluded that plaintiffs involved in the civil rights lawsuit resolved by settlement are entitled to an award of attorney's fees as the prevailing party, when the settlement grants all or some of the relief sought in their Complaint under 42 USC 1988.

Thus we respectfully submit that claimant Abbott here would be entitled to attorney's fees under 42 USC 1983 and 1988, should the City decide to settle on the issue of the claimant's reinstallation of a satellite dish. We urge you, however, to attempt to negotiate a settlement of this matter which includes

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11-30-82 : 4:05PM :

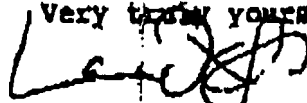
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Mr. Gary Braden  
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an attorney's fee down from the \$6,500 currently claimed.

Thank you very much for the opportunity to be of assistance to you in this matter, and please let us know how we can help further.

Very truly yours,



Dale G. Morgan  
Lemar D. Oxford

LBO/pc

1 HEARINGS AND WE SOLICITED ANYONE WHO HAD A NEED OR A  
2 FEELING ABOUT MAKING INPUT.

3 Q. BUT MY QUESTION IS DID YOU HAVE ANY TESTIMONY  
4 FROM ANYONE WHO HAD PARTICULAR KNOWLEDGE CONCERNING  
5 SATELLITE RECEPTION TECHNOLOGY?

6 A. YES, WE DID. AND I DON'T RECALL HIS NAME, BUT  
7 I DO HAVE THE INFORMATION HE GAVE US.

8 MR. LEE: I DON'T HAVE ANYTHING MORE.  
9 THANK YOU.

10 THE COURT: THANK YOU, SIR. YOU'RE  
11 EXCUSED.

12 CALL YOUR NEXT WITNESS.

13 MR. ROPER: YOUR HONOR, WE CALL AS OUR NEXT  
14 WITNESS, JAMES MORGAN.

15 WHEREUPON:

16 JAMES MORGAN,  
17 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN  
18 ACCORDING TO LAW, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. ROPER:

21 Q. MR. MORGAN, WOULD YOU STATE YOUR NAME, PLEASE?

22 A. JAMES MORGAN.

23 Q. AND WHAT'S YOUR RESIDENCE ADDRESS, SIR?

24 A. 413 LINCOLN AVENUE, CAPE CANAVERAL.

25 Q. HOW ARE YOU EMPLOYED, SIR?

1 A. WITH THE CITY OF CAPE CANAVERAL.

2 Q. AND WHAT IS YOUR POSITION?

3 A. I'M THE BUILDING OFFICIAL.

4 Q. HOW LONG HAVE YOU BEEN THE BUILDING OFFICIAL  
5 FOR THE CITY OF CAPE CANAVERAL?

6 A. THIS TIME I THINK I'M GOING ON SEVEN YEARS, A  
7 CUMULATIVE TOTAL IN THAT JOB OF ABOUT TEN YEARS.

8 Q. AND AS THE BUILDING OFFICIAL FOR THE CITY OF  
9 CAPE CANAVERAL, WHAT IS THE SCOPE OF YOUR DUTIES AND  
10 RESPONSIBILITIES?

11 A. THE ADMINISTRATION OF THE ORDINANCES AND THE  
12 CODES OF THE CITY.

13 Q. DURING THE COURSE OF YOUR OCCUPATION IN THAT  
14 JOB, HAVE YOU HAD OCCASION TO REVIEW CERTAIN  
15 DOCUMENTS REGARDING MR. ABBOTT'S RESIDENCE WITHIN THE  
16 CITY OF CAPE CANAVERAL?

17 A. YES, I HAVE.

18 Q. ARE YOU GENERALLY FAMILIAR WITH THE DOCUMENTS  
19 REGARDING THE INITIAL PERMITTING AND CONSTRUCTION OF  
20 THAT RESIDENCE?

21 A. YES, I AM.

22 Q. LET ME SHOW YOU A COPY OF A SKETCH WHICH HAS  
23 PREVIOUSLY BEEN IDENTIFIED AND DISCUSSED AND ADMITTED  
24 INTO EVIDENCE IN THIS CASE, BUT ASK YOU FIRST OF ALL  
25 IF YOU CAN ORIENT YOURSELF TO THIS DIAGRAM, WHETHER

1 OR NOT YOU RECOGNIZE THIS AS BEING AN OVERALL DIAGRAM  
 2 OF MR. ABBOTT'S RESIDENCE AND THE NEIGHBORHOOD?  
 3 A. YES, I DO.  
 4 Q. DO YOU RECOGNIZE THAT THIS IS ROSALIND AVENUE  
 5 HERE RUNNING NORTH AND SOUTH?  
 6 A. YES.  
 7 Q. AND THIS IS JACKSON AVENUE THAT WOULD BE  
 8 RUNNING IN AN EASTERLY AND WESTERLY DIRECTION?  
 9 A. YES.  
 10 Q. FIRST OF ALL, THE RESIDENCE THAT MR. ABBOTT  
 11 RESIDES IN, IS THAT A DUPLEX?  
 12 A. IT WAS PERMITTED BACK IN I BELIEVE IT WAS  
 13 DECEMBER OF 1980 AS A DUPLEX.  
 14 Q. THE PROPERTY ON WHICH THIS DUPLEX WAS  
 15 CONSTRUCTED, THAT IS, IT'S CONSTRUCTED IN PART ON  
 16 LOTS 15 AND 16 AS PLATTED IN THE CITY OF CAPE  
 17 CANAVERAL, IS THAT CORRECT?  
 18 A. THAT'S CORRECT. I BELIEVE IT'S 63 FEET ON  
 19 ROSALIND AND 100 FEET ON JACKSON AVENUE.  
 20 Q. AND THE PORTIONS OF LOT 15 AND 16 INVOLVED,  
 21 THEY'RE THE SOUTHERN PORTIONS OF BOTH OF THOSE?  
 22 A. THAT'S CORRECT.  
 23 Q. AT THE TIME THE BUILDING PERMIT WAS APPLIED FOR  
 24 FOR THE DEVELOPMENT AND CONSTRUCTION OF THIS DUPLEX,  
 25 WHAT WAS THE PARCEL OF PROPERTY FOR WHICH THE

ANTHONY ROLLAND, RPR-CM  
 (407) 648-9095

1 BUILDING PERMIT WAS APPLIED FOR?  
 2 A. IT WAS APPLIED FOR A DUPLEX.  
 3 Q. AND WHAT GENERAL AREA ARE WE TALKING ABOUT WITH  
 4 REGARDS TO THE AREA FOR WHICH THE PERMIT WAS  
 5 SUBMITTED?  
 6 A. FROM SOUTH TO NORTH THERE WAS 63 FEET ON  
 7 ROSALIND, AND THEN GOING WEST FROM THE POINT  
 8 BEGINNING ON JACKSON WAS 100 FEET TO THE WEST.  
 9 Q. SO IN THIS DIRECTION HERE YOU'RE TALKING ABOUT  
 10 63 FEET?  
 11 A. YES, SIR.  
 12 Q. AND IN THAT DIRECTION YOU'RE TALKING ABOUT 100  
 13 FEET?  
 14 A. THAT'S CORRECT.  
 15 Q. AND THAT WOULD BE THE ENTIRE FOUR CORNERS WOULD  
 16 BE THE PARCEL OF PROPERTY FOR WHICH THE PERMIT WAS  
 17 APPLIED?  
 18 A. THAT'S CORRECT.  
 19 Q. NOW, AT THE TIME THAT THE PERMIT WAS APPLIED  
 20 FOR, DID THE CITY OF CAPE CANAVERAL HAVE IN FORCE AND  
 21 EFFECT AN ORDINANCE THAT DESCRIBED WHAT A LOT WAS?  
 22 A. YES. THAT WAS 10-78.  
 23 Q. AND WHAT WAS INCLUDED WITHIN THE DEFINITION OF  
 24 A LOT?  
 25 A. WELL, AS PERTAINING TO THIS, IT BASICALLY SAID

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1 THAT YOU COULD SUBDIVIDE LOTS UP AS LONG AS THEY WERE  
 2 NOT LESS THAN THE REQUIRED AMOUNT, WHICH FOR A  
 3 MULTIFAMILY OR DUPLEX, WOULD HAVE BEEN 6250 SQUARE  
 4 FEET. I BELIEVE THIS PARCEL COMES TO 6300 SQUARE  
 5 FEET. AND ADDITIONALLY IT SAYS THAT THE NARROWEST  
 6 WIDTH WILL DETERMINE THE FRONT. IN THAT PARTICULAR  
 7 CASE ROSALIND AVENUE WOULD BE THE FRONT.

8 Q. LET ME ASK YOU BACK FOR A SECOND. IN REGARDS  
 9 TO AN ALLOWED SUBDIVISION OF A LOT, DID THAT ALSO  
 10 ALLOW FOR PORTIONS OF PLATTED LOTS?

11 A. YES, IT DOES.

12 Q. SO WITH REGARDS TO THE LOT THAT THE BUILDING  
 13 PERMIT WAS APPLIED FOR, THIS AREA HERE WAS AN  
 14 ALLOWABLE LOT UNDER THE CODE AS IT EXISTED AT THE  
 15 TIME?

16 A. YES. BECAUSE IT MET OR EXCEEDED OUR MINIMUM  
 17 REQUIREMENTS.

18 Q. NOW, WITH REGARDS TO THIS LOT HERE ON WHICH THE  
 19 DUPLEX WAS BUILT, AT THE TIME THE DUPLEX WAS BUILT,  
 20 DID THE CITY ALSO HAVE IN FORCE AND EFFECT AN  
 21 ORDINANCE THAT DEFINED WHERE THE FRONT OF THE  
 22 PROPERTY WOULD BE LOCATED?

23 A. YES.

24 THE COURT: MR. ROPER, OBVIOUSLY FROM THIS  
 25 WITNESS YOU'RE TRYING TO ESTABLISH WHAT THE REAR LOT

1 LINE IS AND WHAT THE SIDE LOT LINE IS. HOW IS THAT  
 2 RELEVANT TO ANY OF THE COUNTS IN THIS CASE?

3 MR. ROPER: THE PLAINTIFFS, YOUR HONOR,  
 4 HAVE TAKEN THE POSITION THAT THIS WESTERN PORTION  
 5 HERE IS HIS SIDE YARD AND THEREFORE THEY CAN'T  
 6 INSTALL --

7 THE COURT: I DON'T SEE WHERE THEY'RE  
 8 TAKING THAT POSITION. THEY'RE SAYING THAT THE  
 9 ORDINANCE IS UNCONSTITUTIONAL. WHETHER IT'S A SIDE  
 10 LOT OR A BACK LOT IS IRRELEVANT.

11 MR. ROPER: THE ARGUMENT, JUDGE, THAT'S  
 12 BEEN MADE IN THE MEMORANDUM THAT'S BEEN SUBMITTED IS  
 13 THAT ONE OF THE REASONS THE ORDINANCE IS  
 14 UNCONSTITUTIONAL IS BECAUSE HE CAN'T INSTALL HIS  
 15 SATELLITE DISH IN THIS AREA HERE BECAUSE HE HAS TO  
 16 COMPLY WITH THE SIDE SETBACKS. IT'S THE CITY'S  
 17 OPINION THAT THIS IS HIS REAR YARD AND HE CAN PUT IT  
 18 ANYWHERE HE WANTS TO AND DOES NOT HAVE TO COMPLY WITH  
 19 THE SIDE SETBACKS.

20 MR. LEE: WE ARE TAKING THE POSITION, YOUR  
 21 HONOR, THAT SINCE HE'S BEEN REQUIRED TO COMPLY WITH  
 22 ALL APPLICABLE CAPE CANAVERAL ZONING REGULATIONS, THE  
 23 ORDINANCE THAT WE'RE DEALING WITH SPECIFICALLY SAYS  
 24 HE'S REQUIRED TO COMPLY WITH SIDE SETBACKS. IT'S  
 25 BEEN, IT WAS REFERRED TO AND BROUGHT UP AT ONE OF THE

1 CODE ENFORCEMENT BOARD HEARINGS AND OUR POSITION IS  
2 THAT HE CAN'T COMPLY WITH THAT.

3 THE COURT: WELL, I DON'T SEE WHERE IT'S A  
4 BIG ISSUE BECAUSE ALL OF THE EXPERTS HAVE PLACED IT  
5 IN THAT SIDE YARD OR BACKYARD OR WHATEVER YOU WANT TO  
6 CALL IT. I MEAN I DON'T SEE WHERE IT'S AN ISSUE.

7 MR. ROPER: THE ONLY POINT I'M TRYING TO  
8 MAKE, JUDGE, AS FAR AS WE'RE CONCERNED, HE CAN PUT IT  
9 IN THIS AREA, HERE, THIS WEST YARD, AND WE'RE NOT  
10 GOING TO STOP HIM AND SAY HE HAS TO COMPLY WITH THE  
11 SETBACKS ON THAT.

12 THE COURT: ALL RIGHT. MAKE A STIPULATION  
13 AND THEN WE GO ON TO ANOTHER WITNESS.

14 MR. ROPER: WILL YOU ALL STIPULATE TO  
15 THAT?

16 MR. LEE: I'M NOT SURE WHAT THE STIPULATION  
17 IS THAT'S OFFERED.

18 THE COURT: THAT THAT'S THE BACK AND NOT  
19 THE SIDE SO HE DOESN'T NEED TO COMPLY WITH THE SIDE  
20 REQUIREMENT.

21 MR. LEE: NO, YOUR HONOR, WE WOULDN'T  
22 STIPULATE TO THAT BECAUSE WE'RE AWARE OF  
23 CIRCUMSTANCES WHERE THEY'VE COME BACK OUT AND RECITED  
24 FOR VIOLATION, FOR THE VIOLATION OF THE SIDE SETBACKS  
25 OR FOR ANY SETBACKS.

1 THE COURT: HE'S TELLING YOU THAT THAT'S  
2 THE BACK, SO WHAT'S YOUR POINT IN ARGUING IT?

3 MR. LEE: THE POINT IS THAT THEY'VE  
4 CONSTRUCTED THIS ARGUMENT NOW, BUT ALL ALONG THE  
5 ORDINANCE AS APPLIED TO MR. ABBOTT MAY WELL HAVE BACK  
6 AT THE TIME --

7 THE COURT: FINE, I TELL YOU WHAT. WELL,  
8 YOU JUST STATE THAT THROUGH THIS WITNESS THAT THAT'S  
9 THE BACK AND LET HIM CROSS EXAMINE ANY WAY HE WANTS  
10 FOR THE RECORD.

11 MR. ROPER: OKAY. YOUR HONOR, AS FAR AS  
12 THE CITY OF CAPE CANAVERAL IS CONCERNED, THIS WESTERN  
13 PORTION OF THE LOT IS THE REAR YARD AND THAT MR.  
14 ABBOTT WOULD NOT HAVE TO COMPLY WITH THE SETBACKS IN  
15 THAT AREA.

16 THE COURT: ALL RIGHT, SIR.

17 MR. LEE: JUST ONE QUICK LINE OF  
18 QUESTIONING, YOUR HONOR, AND THAT IS, I BELIEVE IT'S  
19 EXHIBIT 33.

20 MR. ROPER: I'M SORRY, YOUR HONOR. I DID  
21 HAVE A FEW MORE QUESTIONS FOR THIS WITNESS REGARDING  
22 THE COSTS THAT ARE INVOLVED IN THE PERMIT. THEY'RE  
23 CLAIMING THAT THE COSTS OF GETTING THE PERMIT --

24 THE COURT: ALL RIGHT.

25 MR. ROPER: THANK YOU.

1 THE COURT: I THOUGHT WE HAVE ESTABLISHED  
2 IT'S \$50.

3 MR. ROPER: YES, SIR. AND THEY'RE ALSO  
4 CLAIMING THOUGH THAT WE'RE GOING TO REQUIRE A SITE  
5 SURVEY AND A SURVEYOR TO COME IN AND DO THAT.

6 THE COURT: ALL RIGHT. WE HAVE GOT INTO  
7 EVIDENCE IT'S \$50, SO GO ON THERE FROM THERE.

8 BY MR. ROPER:

9 Q. MR. MORGAN, WITH REGARDS TO THE REQUIREMENTS OF  
10 THE SATELLITE DISH ORDINANCE, IN ORDER TO ISSUE A  
11 BUILDING PERMIT, WOULD YOU REQUIRE MR. ABBOTT TO HAVE  
12 A FORMAL SITE SURVEY PERFORMED?

13 A. BECAUSE THE BUILDINGS ARE EXISTING AND WE HAVE  
14 ALREADY ESTABLISHED WHERE THE PROPERTY LINES ARE, WE  
15 COULD USE A SKETCH FOR THE PURPOSES OF LOCATING A  
16 SATELLITE DISH.

17 Q. AND YOU'RE TALKING ABOUT A HAND DRAWN SKETCH  
18 THAT THE PROPERTY OWNER COULD DO HIMSELF?

19 A. YES, DIMENSIONED AND WE COULD USE THAT, YES.

20 Q. AND IN MR. ABBOTT'S CASE HE ALREADY HAS A SIX  
21 FOOT FENCE ON HIS PROPERTY. WOULD YOU REQUIRE HIM TO  
22 HAVE AN ADDITIONAL FENCE PUT UP IN ORDER TO COMPLY  
23 WITH THE ORDINANCE?

24 A. NO, WE WOULD NOT.

25 Q. MR. ABBOTT TESTIFIED CONCERNING SOME

1 CONVERSATIONS THAT HE HAD WITH YOU IN EARLY 1992  
2 WHEREIN YOU AUTHORIZED HIM TO REINSTALL HIS SATELLITE  
3 DISH. HAVE YOU HAD HEARD THOSE ALLEGATIONS BEFORE?

4 A. YES, I HAVE.

5 Q. AT THE TIME THAT YOU HAD THOSE CONVERSATIONS  
6 WITH MR. ABBOTT, WERE YOU AWARE THAT HIS SATELLITE  
7 DISH HAD BEEN DOWN FOR UP TO FOUR YEARS?

8 A. NO, SIR, I WAS NOT.

9 Q. HAVE YOU SUBSEQUENTLY ADVISED MR. ABBOTT THAT  
10 YOU AND HE HAD A MISUNDERSTANDING CONCERNING THE  
11 LENGTH OF TIME WHICH THE SATELLITE WOULD HAVE BEEN  
12 DOWN?

13 MR. LEE: OBJECTION. LEADING, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 Q. HAVE YOU HAD SUBSEQUENT CONVERSATIONS WITH MR.  
16 ABBOTT REGARDING THAT?

17 A. YES, I HAVE.

18 Q. AND WHAT HAVE YOU ADVISED MR. ABBOTT?

19 A. THAT I BELIEVE IT WAS AFTER HIS FIRST  
20 APPEARANCE AS A NEW COUNCIL MEMBER OR THE SECOND,  
21 AFTER LISTENING TO SOME OF THE TESTIMONY ON A CODE  
22 ENFORCEMENT ISSUE, I TOLD HIM THAT WE CLEARLY MUST  
23 HAVE HAD A MISUNDERSTANDING BECAUSE I HAD NO IDEA  
24 THAT THE DISH HAD BEEN DOWN FOR THAT PERIOD OF TIME.

25 MR. ROPER: THANK YOU, SIR.

## CROSS EXAMINATION

BY MR. LEE:

Q. PLEASE UNFOLD THIS EXHIBIT AND TAKE A LOOK AT THAT, SIR. WHAT IS THAT?

A. THAT LOOKS LIKE A SKETCH THAT A DEVELOPER HAS MADE UP FOR THE PURPOSES OF OBTAINING A BUILDING PERMIT.

Q. AND THOSE ARE, IN FACT, THE APPROVED PLANS WITH THE CITY STAMP ON THEM, AREN'T THEY?

A. THIS IS A COPY OF AN APPROVED PLAN OR SITE PLAN.

Q. AND THIS IS WHEN THE DEVELOPER, THE DEVELOPER OR BUILDER RECEIVED HIS APPROVAL FOR THE CONSTRUCTION ON THESE PLANS, CORRECT?

A. IT APPEARS TO BE, YES.

Q. DO YOU SEE IN THE UPPER LEFT-HAND CORNER ABOVE MR. ABBOTT'S LOT?

A. YES.

Q. DO YOU SEE WHERE IT SAYS 15' FOOT SIDE SETBACK?

A. YES.

Q. THANK YOU. SIR, ARE YOU FAMILIAR WITH A GENTLEMAN IN CAPE CANAVERAL NAMED SCOTT MCCALLEY?

A. YES, I AM.

Q. ARE YOU FAMILIAR WITH THE CONSTRUCTION THAT OCCURRED ON HIS LOT?

A. YES.

Q. ISN'T IT TRUE THAT HE PUT UP --

MR. ROPER: YOUR HONOR, I OBJECT AS BEING OUTSIDE THE SCOPE.

THE COURT: SUSTAINED. WE'RE ONLY CONCERNED WITH THIS LOT HERE, NOT SOMEBODY ELSE'S.

MR. LEE: YOUR HONOR, I'M GOING TO INTEND TO TIE THIS TOGETHER IN TERMS OF THE WAY THE CITY DEALS WITH SETBACKS.

THE COURT: OBJECTION SUSTAINED.

BY MR. LEE:

Q. LET ME ASK YOU ONE OTHER THING. THE NARROWEST, LOT 151 CONFIGURED THIS WAY, ISN'T IT?

A. LOT 15, YES, RUNS NORTH AND SOUTH.

Q. YOUR CITY REGULATION, ZONING REGULATIONS?

A. HUH?

Q. ISN'T IT TRUE THAT THEY DEFINE, THAT THEY DEFINE THE FRONT AND SIDE WITH REFERENCE TO THE TERM LOT?

A. I DON'T UNDERSTAND THAT QUESTION.

Q. THAT THEY USE THE TERM LOTS AND WHERE THE NARROWEST PART OF THE LOT ABUTTING A STREET IS?

A. THAT WAS PERMITTED AS A DUPLEX AND IT SETS ON PORTIONS OF TWO LOTS.

Q. ALL RIGHT. THE NARROWEST PORTION OF LOT 15 IS



1 THIS PORTION, CORRECT?

2 A. THAT'S ONE BUILDING PERMIT ON ONE LOT THAT THEY  
3 CHANGED AND SUBDIVIDED TO 63 FOOT BY 100.

4 Q. OKAY. THERE ISN'T ANY DISPUTE THAT THE FRONT  
5 OF WHERE MR. ABBOTT'S HOUSE OR THE ENTIRE DUPLEX IS  
6 ON JACKSON AVENUE, RIGHT?

7 A. NO, SIR. IT'S ON ROSALIND AVENUE.

8 Q. BUT I MEAN YOU'RE NOT DISPUTING THAT THAT'S  
9 WHERE HIS FRONT DOOR AND HIS MAILBOX AND HIS DRIVEWAY  
10 AND ALL OF THAT IS, ARE YOU?

11 A. NO, SIR. THAT MAKES NO DIFFERENCE. I'M NOT  
12 DISPUTING THAT.

13 MR. LEE: IF I MAY HAVE JUST ONE MOMENT.

14 Q. I'LL TRY TO BE BRIEF. I KNOW THE COURT DOESN'T  
15 WANT ME TO BELABOR THIS ISSUE. R-2 MINIMUM SETBACK  
16 REQUIREMENTS OF CAPE CANAVERAL CODE, ARE YOU FAMILIAR  
17 WITH THOSE?

18 A. YES, SIR.

19 Q. BECAUSE OF THIS DEVELOPMENT THAT OCCURRED HERE  
20 AND THE CONFIGURATION, DOES THAT MAKE THIS A  
21 NON-CONFORMING LOT?

22 A. BECAUSE OF THE -- IT APPEARS TO BE THEY'VE  
23 CREATED ZERO LOT LINE OWNERSHIP AND DONE THEIR OWN  
24 SUBDIVIDING WITHOUT GOING THROUGH THE CITY PROCESS.

25 Q. SO AS A RESULT OF THAT, UNDER THE ZONING

1 REGULATIONS, DOES IT GET CALLED A NON-CONFORMING LOT?

2 A. IT WAS A NON-, A LEGAL NON-CONFORMING LOT WHEN  
3 THEY STARTED. THOSE WERE SUBDIVIDED BACK IN 1921 OR  
4 SOMETHING.

5 Q. ALL RIGHT. AND DO YOU KNOW WHAT THE SETBACK  
6 REQUIREMENTS ARE FOR THE SIDE AND REAR FOR  
7 NON-CONFORMING LOTS?

8 A. YES, I DO.

9 Q. WHAT'S THE SETBACK?

10 A. ON THE FRONT IT WOULD BE 25 FEET, AND IN THIS  
11 PARTICULAR CASE YOU HAVE A RIGHT OF WAY COMING  
12 THROUGH ON JACKSON, SO LIKEWISE IT HAS TO BE 25 FEET  
13 FOR THAT SETBACK, AND THEN THE REAR MUST BE 15 FEET  
14 MINIMUM AND THE SIDE WOULD BE EIGHT FOOT OR TEN  
15 PERCENT OF THE WIDTH OF THE LOT, WHICHEVER IS  
16 GREATER.

17 Q. SO LET ME SHOW YOU PAGE 29 FROM THE ZONING  
18 REGULATIONS OF THE CITY OF CAPE CANAVERAL, R-2  
19 MINIMUM SETBACK REQUIREMENTS, IS THAT THE PORTION  
20 THAT APPLIES?

21 A. YES.

22 Q. OKAY. AND THE SIDE SETBACK IS EITHER EIGHT OR  
23 TEN FEET, AND IF IT'S A NON-CONFORMING LOT, 15 FEET?

24 A. THAT'S CORRECT.

25 Q. AND FOR A SIDE CORNER LOT --

A. UH-HUH.

Q. -- THE SETBACK IS 25 FEET ON ALL NON-CONFORMING LOTS OF RECORD? I'M SORRY. 25 FEET, IS IT TRUE THAT THE SIDE SETBACK LINE IS 25 FEET FOR NON-CONFORMING LOTS OF RECORD?

A. IS IT TRUE WHAT?

Q. I'M SORRY. I GOT THAT WRONG. THE SIDE ON A CORNER LOT LINE, IF THIS IS A NON-CONFORMING LOT, WHAT IS THE SETBACK, JUST TELL ME.

A. IT'S 25 FEET IN THIS PARTICULAR CASE FROM EITHER STREET, AND IF YOU GO TO 641.17, IT REFERS TO SPECIAL SETBACKS, AND THAT REFERS TO RIDGEWOOD AVENUE, ATLANTIC AVENUE AND ASTRONAUT BOULEVARD.

Q. NONE OF THOSE ARE RELEVANT?

A. NO.

MR. LEE: I DON'T HAVE ANYTHING FURTHER.

THE COURT: THANK YOU, MR. MORGAN. YOU CAN STEP DOWN.

CALL YOUR NEXT WITNESS.

MR. ROPER: YOUR HONOR, THE NEXT WITNESS THAT I HAVE IS MR. FERRARI WHO IS THE EXPERT OBTAINED BY THE CITY. I ANTICIPATE THAT HE'S GOING TO TAKE ABOUT AN HOUR, HOUR AND A HALF.

THE COURT: OKAY. WELL, GET HIM STARTED.

MR. ROPER: THANK YOU.

## FRINGE BENEFITS

benefits are in addition to regular salary or wages and are a matter of bargaining in union contracts. See also Calafena plan; Pension plan; Perquisites.

**Frisk.** Contact of the outer clothing of a person to detect by the sense of touch whether a concealed weapon is being carried. *People v. Francis*, 1 Dept. 108 A.D.2d 322, 489 N.Y.S.2d 166. A pat-down search of a suspect by police, designed to discover weapons for purpose of insuring safety of officer and others nearby, and not to recover contraband or other evidence for use at subsequent trial. The scope of a frisk has been limited by the courts to be less than a full-scale search. In determining whether a police officer had a basis for initiating a frisk, there are two matters to be considered. One concerns whether the officer had a sufficient degree of suspicion that the party frisked was armed and dangerous, and the other whether the officer was rightfully in the presence of the party frisked so as to be endangered if that person was armed. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1968, 20 L.Ed.2d 889. See also *Stop and frisk*.

**Frith.** Sax. Peace, security, or protection. This word occurs in many compound terms used in Anglo-Saxon law.

**Frithborg** /friðbɔrg/. Frank-pledge.

**Frithbote** /friðbɔwt/. A satisfaction or fine, for a breach of the peace.

**Frithbreach** /friðbriɪch/. The breaking of the peace.

**Frithgar** /friðgær/. The year of jubilee, or of meeting for peace and friendship.

**Frithgilda** /friðgilda/. Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace.

**Frithman** /friðmæn/. A member of a company or fraternity.

**Frithsoene** /friðsɔwn/. Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Also spelled "frithsoen."

**Frithspil** /friðspil/. A spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

**Frithstool** /friðstuwil/. The stool of peace. A stool or chair placed in a church or cathedral, and which was the symbol and place of sanctuary to those who fled to it and reached it.

**Frisivious.** Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. *Liebowitz v. Aimexco Inc.*, Colo.App., 701 P.2d 140, 142. Frivolous pleadings may be amended to proper form, or ordered stricken, under federal and state Rules of Civil Procedure.

**Frivolous action.** Groundless lawsuit with little prospect of success; often brought to embarrass or annoy the defendant. See *Failure to state cause of action*.

**Frivolous appeal.** One in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed. *Brooks v. General Motors Assembly Division*, Mo.App., 527 S.W.2d 50, 53. In federal practice, if a court of appeals determines that an appeal is "frivolous," it may award damages and single or double costs to the appellee. Fed.R.App.P. 38.

**From.** As used as a function word, implies a starting point, whether it be of time, place, or condition; and meaning having a starting point of motion, noting the point of departure, origin, withdrawal, etc., as he traveled "from" New York to Chicago. *Silva v. MacAuley*, 135 Cal.App. 249, 26 P.2d 887. One meaning of "from" is "out of". Word "from" or "after" an event or day does not have an absolute and invariable meaning, but each should receive an inclusion or exclusion construction according to intention with which such word is used. *Acme Life Ins. Co. v. White*, Tex.Civ.App., 99 S.W.2d 1059, 1060. Words "from" and "to," used in contract, may be given meaning to which reason and sense entitles them, under circumstances of case. *Woodruff v. Adams*, 134 Cal.App. 490, 25 P.2d 529.

**From one place to another.** From premises owned by one person to premises owned by another person in some legal subdivision or from one legal subdivision to another.

**From person.** Includes taking from presence of person assaulted as well as taking of property in actual contact with person of one robbed.

**From, through, or under.** The term refers to origin or devolution of property, and unless some title to or interest therein has been derived by assignment or otherwise from party adverse to decedent's estate, statute barring testimony is inapplicable.

**From time to time.** Occasionally, at intervals, now and then. See *From*.

**Front.** Forepart, as opposed to the back or rear. Any side or face of a building is a front, although the word is more commonly used to denote the entrance side. In re *McInerney*, 47 Wyo. 258, 34 P.2d 35, 43. As applied to a bare lot, it is that side of lot towards which, in ordinary circumstances, house, when built, will most likely face, and very general usage of building houses with their main entrance toward shorter street line results in common understanding that this is side intended when front of lot is referred to.

**Frontage.** Linear distance of property along street, highway, river, or lake. Extent of front along road or street. *Tzesses v. Barbaheenn*, 125 N.J.L. 643, 17 A.2d 539, 540. The line of property on a public street. *Jagendorf v. City of Memphis, Tenn.*, 520 S.W.2d 333, 335. Space available for erection of buildings, and does not include cross streets or space occupied by sidewalk or any ornamental spaces in plat between sidewalks and



# City of Cape Canaveral

August 9, 1993

The attached site location drawing was taken from City microfilm stored in the City's Building Department and identified as follows:

Drawing No. 3216/3219  
7801-7803 Rosalind Avenue  
Two Bedroom Duplex  
Delta III Home Builders

The drawing includes the 414 Jackson Avenue location within the City of Cape Canaveral.

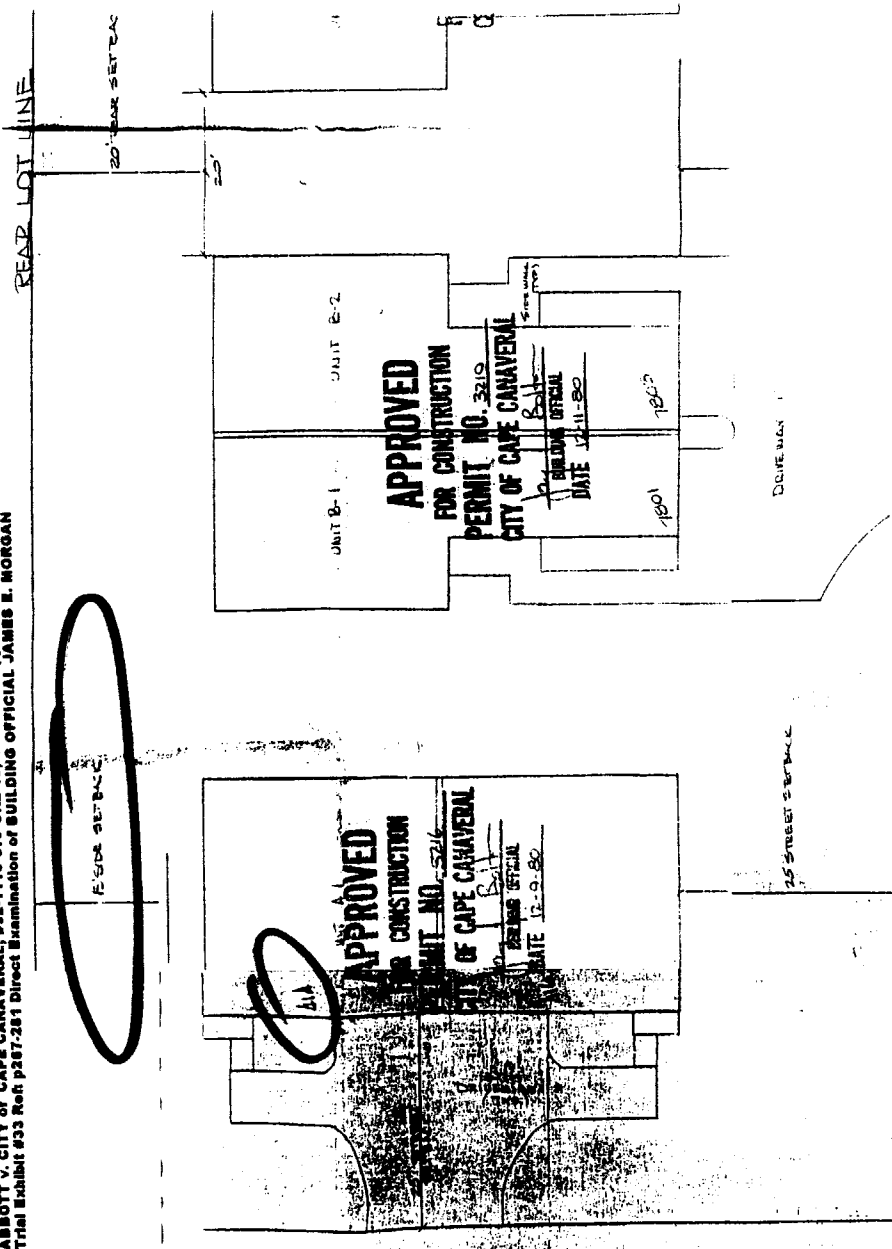
*Faith G. Miller*  
Faith G. Miller, EMC/AAE  
City Clerk

106 POLK AVENUE • POST OFFICE BOX 328 • CAPE CANAVERAL, FL 32920-0328  
TELEPHONE (407) 968-1200 • FAX (407) 788-3170

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PAGE 008

ABBOTT V. CITY OF CAPE CANAVERAL, #92-1113-CIV-ORL 18, 11 Circuit Appeal 894-2135  
Trial Exhibit #33 Ref p287-281 Direct Examination of BUILDING OFFICIAL JAMES E. MORGAN





## City of Cape Canaveral

105 POLK AVENUE • P.O. BOX 126  
CAPE CANAVERAL, FLORIDA 32920  
TELEPHONE 407 783-1100

### M E M O R A N D U M

DATE: January 6, 1993  
TO: File  
FROM: James E. Morgan, Building Official *28<sup>th</sup>*  
RE: LETTER FROM ROBERT ABBOTT DATED JANUARY 5, 1993

The following is my response to the above referenced letter as follows:

1. Application with attachments was dated October 30, 1992 not November 3, 1992.
2. I discussed Section 641.21, Setback Encroachments, with Mr. Abbott and my staff provided him a copy of that particular section of the Code, at his request, on October 30, 1992.
3. The shed (100 sq. ft.) does require a permit as per Resolution #92-56 which states that when an inspection is required, a permit is needed. We check for size verification, setbacks, and proper tie downs.
4. What Mr. Abbott refers to as a "windstorm cover" encroaches into the required setback when up, which it has been since it was installed without a permit. Refer to Section 641.21(E).
5. There is no Survey of the property located in the City address file or on micro film. A sketch if correct will suffice.
6. Again, I went over this with Mr. Abbott on October 30, 1992.
7. Copies of any and all Ordinances are available through the City Clerk to purchase or may review in the Building Department. Additionally, Mr. Abbott was provided a copy of all the City regulations and ordinances when he took office as a Council Member.

Memo to the File  
January 6, 1993  
Page 2 of 2

On January 5, 1993, I met with Robert Abbott in the Building Department when he hand carried his letter dated January 5, 1993. After review of the letter, I told him since we had a definite conflict, I would go to the City Manager for permission to call in an outside source to deal with this permit application. Bennett Boucher, Acting City Manager, gave me permission to go ahead.

I called Artis Gunn on January 6, 1993 and arranged a meeting at 4:30 P.M. on January 7, 1993.

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF FLORIDA  
3 ORLANDO DIVISION

4 CASE NO. 92-1113-CIV-ORL-18

5 ROBERT J. ABBOTT,

6 Plaintiff,

7 vs.

8 CITY OF CAPE CANAVERAL,  
9 CODE ENFORCEMENT BOARD OF  
10 THE CITY OF CAPE CANAVERAL,  
11 and THOMAS B. KLEIVING,

12 Defendants.



13 DEPOSITION OF: RONALD COOK, Ph.D.

14 DATE: June 21, 1993

15 TIME: 1:30 p.m. - 4:15 p.m.

16 PLACE: 15 Southeast First Avenue  
17 Suite B  
18 Gainesville, Florida

19 REPORTED BY: Marsha L. Schnipper  
20 Court Reporter  
21 Notary Public

22 APPEARANCES:

23 Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
24 BY: JANET COURTNEY, ESQUIRE  
25 215 North Eola Drive  
Post Office Box 2809  
Orlando, Florida 32802  
Attorney for Plaintiff

Dean, Ringers, Morgan & Lawton, P.A.  
BY: MICHAEL J. ROPER, ESQUIRE  
Post Office Box 2928  
Orlando, Florida 32802  
Attorney for Defendant

1 would say, yes, indeed, it is enhanced by preventing  
2 wind-blown debri, minimizing wind-blown debri.

3 Q. Are you aware of any formal resolution of the City  
4 of Cape Canaveral to address wind-blown debri as being part  
5 of the safety objective?

6 A. No.

7 Q. I'd like you to next look at -- I think paragraph D  
8 is what you refer to as being the next portion of the  
9 ordinance that you thought you could give testimony on --  
10 and ask you what your opinion about that portion of the  
11 ordinance is?

12 A. My opinion on that portion -- let me discuss it.  
13 This is paragraph D. "No earth station antenna shall be  
14 mounted onto the top or side of any single family building,  
15 duplex, or triplex."

16 My opinion on that is strictly from a structural  
17 perspective. It has nothing to do with aesthetics. From a  
18 structural perspective I could design you an adequate  
19 support system for a satellite dish on top of your building,  
20 on the side of your building. It would necessitate possible  
21 modifications to the building to support the dish and the  
22 loads from the dish catching the wind. I might have to --  
23 if it was on the roof, you might have to add members to your  
24 roof trusses. If it was in the wall, you might have to  
25 strengthen the walls.

1 But, in fact, from a structural perspective, it can  
2 be done, and there is no reason to preclude that from a  
3 structural perspective.

4 Q. And this is on any structure?

5 A. M'hum. Yes.

6 Q. Do you believe from your technical perspective that  
7 this is a reasonable portion of the ordinance?

8 A. Well, from my perspective it doesn't need to be a  
9 part of the ordinance, but that is only from a structural  
10 perspective. I suspect that that is geared more toward  
11 aesthetics. I don't know.

12 Q. But from a structural perspective do you believe  
13 that it is an unreasonable portion of the ordinance from  
14 your technical background?

15 MR. ROPER: Object to the form of the question.  
16 You can answer.

17 BY THE WITNESS:

18 A. It's not necessary. I don't want to say it's  
19 unreasonable. It's just -- it's not necessary.

20 Q. Why don't you want to say it's unreasonable?

21 A. Well, there may be other -- it would be -- the  
22 merit in it from a structural perspective would be ground  
23 mounted has no influence on the structure. If you mount it,  
24 indeed mount it to the top on the roof or on the wall of a  
25 structure, it necessitates -- should necessitate -- matter

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 94-2135

D.C. Docket No. 92-1113-CIV-ORL-18

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

NOV 16 1994

MIGUEL J. CORTEZ  
CLERK

ROBERT J. ABBOTT,

Plaintiff-Appellant,

versus

CITY OF CAPE CANAVERAL; CODE ENFORCEMENT  
BOARD OF THE CITY OF CAPE CANAVERAL,

Defendants-Appellees,

THOMAS B. KLEIVING,

Defendant.

Appeal from the United States District Court  
for the Middle District of Florida

(November 16, 1994)

Before COX, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

Appellant Robert J. Abbott appeals the district court's order finding that 47 C.F.R. § 25.104 (1992) neither preempts § 641.61 of the Cape Canaveral ordinance nor violates Abbott's constitutional rights. Abbott brought suit against the City of Cape Canaveral challenging the validity of § 641.61 which limited placement of a satellite television receive-only antenna he had

established that § 641.61 permitted Abbott to position the satellite dish so as to receive approximately 250 channels but precluded reception from several Eastern satellites. The district court found that the local ordinance satisfied the requirements to avoid FCC preemption and that Abbott's constitutional rights were not violated. While the ordinance could have been better crafted, it is sufficient to withstand appellant's attacks under the circumstances presented. Accordingly, we AFFIRM.

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

Case No. 92-1113-CIV-ORL-18

ROBERT J. ABBOTT,

Plaintiff,

vs.

CITY OF CAPE CANAVERAL,  
CODE ENFORCEMENT BOARD OF  
THE CITY OF CAPE CANAVERAL,  
and THOMAS B. KLEIVING,

Defendants.

AFFIDAVIT OF ATTORNEYS' FEES

STATE OF FLORIDA  
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, this day personally appeared R. Kimbark Lee, Esquire, of the law firm of LOWNDES, DROSDICK, DOSTER, KANTOR & REED, PROFESSIONAL ASSOCIATION, attorneys for Plaintiffs, who, being duly sworn, deposes and says:

1. I am an attorney duly authorized to practice law in all the state and federal courts in the State of Florida. I have been actively engaged in the practice of law in Florida for approximately 10-1/2 years.

2. I was the attorney for Robert J. Abbott in the above-styled litigation and the subsequent appeal in the United States Eleventh Circuit Court of Appeals under Case No. 94-2135.

3. As a consequence of the foregoing, I am personally familiar with the attorneys' fees incurred by Robert J. Abbott in connection with this action, including representation of Mr. Abbott in negotiations and presentations to the City of Cape Canaveral before filing suit, and throughout the entire cause of the trial and appellate proceedings.

4. Through and including December 15, 1994, Plaintiff's attorneys and paralegals have expended 509 hours in the representation of Mr. Abbott at billing rates varying from \$65-\$175 per hour.

\* 5. Through and including October 15, 1994, Robert J. Abbott has incurred attorneys' fees in the total amount of \$106,090.75 in connection with this action. Attached hereto as Composite Exhibit "A" are copies of the attorneys' fees and cost invoices in this matter through December 15, 1994.


\* 6. The attached invoices also reflect various costs incurred by Mr. Abbott in the total amount of \$10,541.45. In addition to these billed costs, Mr. Abbott has incurred substantial additional costs which he paid directly for expert witness fees and other costs.

7. These attorneys fees and costs were charged to Mr. Abbott over the course of more than two years of protracted federal court litigation, including an appeal, pursuant to a written hourly fee

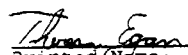


agreement with Mr. Abbott. Although the litigation was not ultimately successfully, the hourly rates charged by the attorney and the time expended by those attorneys, was reasonable and at all times requested by Mr. Abbott.

FURTHER AFFIANT SAYETH NAUGHT.

  
R. Kimbark Lee

SWORN TO AND SUBSCRIBED before  
me this 10th day of February,  
1994 by R. Kimbark Lee  
who is personally known to me or  
produced identification.  
Identification: \_\_\_\_\_

  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC  
Serial No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(NOTARY SEAL)



THERESA A. EGAN  
MY COMMISSION # CC280498 EXPIRES  
May 13, 1997  
BONDED THRU TROY FARM INSURANCE, INC.

# MEMORANDUM

TO: Robert Abbott  
FROM: Kimbark R. Lee *RL*  
DATE: November 1, 1994  
RE: Abbott/Appeal (059033/39247)

The following is some information regarding the panel that will decide your appeal:

1. Rosemary Barkett was appointed to the 11th Circuit Court of Appeal, I believe, by President Clinton within the last year. Most recently before that, she was the Chief Justice of the Florida Supreme Court. She is 55 years old and a resident of Miami. She went to Springhill College in Alabama and for a time, I believe, was a nun. At age 32, she graduated from the University of Florida School of Law.
2. Susan H. Black is about 45 years old. She went to college at FSU and law school in Gainesville at University of Florida. She was formerly a United States Judge for the Middle District of Florida and, I believe, was the Chief Judge for the Middle District for a period of time. She is also fairly new the 11th Circuit Court of Appeals (within the last 2 years or so). Her home is in Jacksonville, Florida. *ditto*
3. Emmett R. Cox is from Mobile, Alabama. He attended college and law school at the University of Alabama-Birmingham. He is 59 years old.